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SUBJECT: A NEW HUMAN RIGHTS AGENDA FOR COLOMBIA

REF: BOGOTA 3027

Summary

11. (SBU) Embassy Bogota is engaged in a strategy to raise the USG profile on human rights in Colombia (ref). It is just as important to define the substantive areas where we hope to see progress in the coming year. In Post's opinion, key elements of our agenda with the GOC should be to:

-- make progress against impunity, i.e., the investigation and prosecution for paramilitary crimes, extrajudicial executions, forced disappearances and violence against unionists, human rights defenders, Afro-Colombians, and indigenous;

-- urge the Colombian military to implement its existing human rights regime; and

-- counter the GOC's tendency to stigmatize human rights defenders as guerrilla sympathizers, which subjects them to abuse, threats and violence.

We see the Department's new engagement with the U.S. Congress on Colombia as an opportunity to improve and modernize the human rights certification process and seek to make congressional funding more flexible. End summary.

IMPUNITY: REDUCING THE BACKLOG OF CASES

12. (SBU) We are concerned about ongoing human rights abuses such as extrajudicial executions (EJEs) and threats and violence against unionists, human rights defenders, Afro-Colombians, and indigenous. However, gross human rights abuse categories are on a downward trend from the peak years of 1999-2004. There remains a need to resolve thousands of existing cases and bring the perpetrators of those crimes to justice. Clearly, this is not a task that the GOC can complete in the short-run; but we should define a realistic expectation of what constitutes judicial progress. NGOs consistently point out that an important element to ending impunity is the prosecution of the intellectual authors of such crimes rather than just the perpetrators. While this may be possible in some cases, it is not in others, as there may be no evidence or insufficient evidence for proof in a criminal case.

13. (SBU) The Justice and Peace Law (JPL) process for paramilitary and guerilla demobilization continues to be a difficult process that seeks to balance the broader concept of a search for historical truth with the more narrow focus of judicial proceedings. In the short term, the USG should continue to press for resolution of the JPL process, a more effective reparation process for victims of paramilitary and guerrilla violence, and a determination by Colombia on whether it wants a "truth commission" or a judicial process. The USG will also press the Prosecutor General's Office to significantly increase the DNA identification of victims' remains and return of the remains to their families.

More Resources for Administration of Justice

14. (SBU) The Colombian Prosecutor General's Office faces an overwhelming case load - not only having to address human rights crimes and the justice and peace process, but the significant case load involving narcotics and related offenses, terrorism and violent and organized crime. While the GOC added about 250 prosecutors in 2008-2009, the Prosecutor General's Office and Colombian National Police each need 200-300 more investigators. The Embassy will press the GOC for this increase in personnel and for this long term commitment. DOJ and U.S. law enforcement

agencies have developed programs to provide the requisite intensive training and assistance. Critical issues also exist with respect to increasing criminal investigators and more permanent assignment to units involved in human rights investigations. In addition, the Colombian judiciary must become more efficient in presiding over human rights proceedings.

IMPLEMENTING MILITARY HUMAN RIGHTS REFORMS

15. (SBU) Most international experts agree that the Colombian military has developed an adequate legal and regulatory framework for the protection of human rights and international humanitarian law. However, the implementation and institutionalization of those policies within field units remains a challenge. Colombian military has deployed operational lawyers to give legal advice to commanders. We can help by continuing the MILGRP project with the Ministry of Defense to develop rules of engagement and rules for use of force by troops. We can also strengthen the Military Justice System by improving the Military's handling of civilian deaths and in cooperating with the Prosecutor General's Office in these death investigations. The Embassy will continue to press for the completion of an MOU between the MOD and the Prosecutor General's Office on how civilian death cases should be handled. In addition, we have helped improve the effectiveness of the Inspector General of the Armed Forces, which has responsibility for administrative investigations and disciplinary actions.

16. (SBU) In addition, the Office of the UN High Commissioner for Human Rights (UNHCHR), with the assistance of USAID, plans to establish a monitoring project to advise the Colombian military on progress in implementing its human rights policies. A complementary effort is the Ambassador's engagement of Minister of Defense (MOD) Silva to renew the informal consultative mechanism with MOD Silva, UNHCHR, and ambassadors from key donor countries.

COUNTERING STIGMATIZATION OF HUMAN RIGHTS DEFENDERS

¶17. (SBU) The polarized nature of the Colombian conflict has created a difficult environment for civil society. Human rights defenders and trade union leaders are often accused by the GOC of creating an environment that supports terrorist organizations. The GOC's attitude has led to the illegal surveillance of NGOs by the DAS and military intelligence. While a small portion of NGOs are allied with or manipulated by some illegal armed groups, we do not see it as a widespread occurrence, nor does it outweigh the U.S. commitment to promote a robust civil society in Colombia. We are already taking a more public posture through increased outreach to NGOs, including publicized NGO meetings with the Ambassador and quarterly consultations. We will also relook at derogatory information on human rights defenders in our own lookout systems, working with Washington agencies to remove hits based on spurious information. Together with the Ministry of Social Protection, USAID has developed a public outreach campaign to confront the stigmatization of union members that could serve as a model for a public outreach strategy for human rights defenders.

¶18. (SBU) One specific area in which the GOC can demonstrate its commitment to civil society is a transparent investigation into the illegal or inappropriate surveillance of NGOs, political opposition, labor groups, and Supreme Court by the Administrative Department of Security (DAS). The Embassy has pressed the GOC for a full accounting of the crimes committed in the scandals. We will consider assisting the GOC as it closes DAS and stands up a leaner, more professional intelligence service. We can also support the UNHCHR's project to help DAS purge politically motivated intelligence in its files.

Seeking Flexibility on Certification

¶19. (SBU) The human rights certification process attached to financial assistance has had a marginally positive impact by routinely putting human rights issues on the front burner of the relationship. We support the Department's intention to engage Congress and NGOs on revamping our approach to Colombia, especially with regard to human rights. We believe the GOC will appreciate clear signals from us and play a constructive role in such a process. We see an opportunity to revise the certification process and loosen the Congressional earmarks on funding. Specifically, we propose to update the certification process by: a) modernizing the criteria for Colombia's current reality; b) disconnecting the policy decision of whether to certify from the frantic end-of-fiscal-year deadline; and c) giving policymakers new options for addressing shortfalls in human rights performance other than a dramatic action in current legislation of a 30%-cut in military funding.

¶10. (SBU) We understand from the senior policy review session held on October 8 that the Department intends to pursue an agreement with the U.S. Congress, the GOC, and NGOs on the USG approach to Colombia with regard to human rights. We suggest this initiative seek to make congressional certification more flexible to become a more credible carrot-and-stick approach that will encourage better GOC performance on human rights - while still maintaining the remedial measures implicit in the certification process as proposed in para 9. This change will better enable us to continue re-orienting Plan Colombia programs to the Colombia Strategic Development Initiative (CSDI), a whole-of-government approach to countering illegal drugs and illegal armed groups. One of our objectives is to use CSDI to expand rule of law programs (community policing, improved criminal investigation, human rights ombudsmen, increased numbers of prosecutors and judges, and court proceedings)

in specific consolidation zones where state presence is weak. Increased flexibility for funding dedicated to human rights, law enforcement, eradication, and rule of law would greatly facilitate this effort.

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